163 US 299

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 150.

L. F. HENNINGTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED AUGUST 24, 1892.

(15,111.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 2, 1895.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Georgia, before you or some of you, being the highest court of the said State in which a decision could be had, in a certain suit between the State of Georgia and L. F. Hennington, wherein was drawn in question the validity of a statute of the State of Georgia, to wit, § 4578 of the Code of said State, forbidding the running of freight trains on the Sabbath day upon any railroad in said State, and making the superintendent of transportation of such railroad punishable therefor, on the ground of said statute being repugnant to the Constitution of the United States, to wit, art. 1, § 8 thereof, which provides, among other things, that Congress shall have power to regulate commerce with foreign nations, among the several States, and with the Indian tribes, and the decision was in favor of the validity of said statute and was against the right, privilege, and exemption specially set up and claimed by the said Hennington under said clause of said Constitution, a manifest error has happened, to the great damage of the said Hennington, as by his complaint appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send this record and proceedings aforesaid, with all things concern-
2 ing the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October next, in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what *is* right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 22d day of July, in the year of our Lord one thousand eight hundred and ninety-two.

[Seal U. S. Circuit Court, N. D. Georgia.]

O. O. FULLER,
Clerk U. S. Circuit Court, Northern District of Georgia.

Allowed by—

HENRY B. BROWN,
Justice of the Supreme Court of the United States.

Filed in office July 26, 1892.

Z. D. HARRISON,
C. S. C. Ga.

3 THE UNITED STATES OF AMERICA, *ss:*

To the State of Georgia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Georgia, wherein L. F. Hennington is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf; and you are further notified that the copy of said writ of error has been lodged for you in the clerk's office in the supreme court, in the State of Georgia, at Atlanta.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 13th day of July, in the year of our Lord one thousand eight hundred and ninety-two.

HENRY B. BROWN,
Asso. Just. Sup. Ct.

Filed in office July 26, 1892.

Z. D. HARRISON,
C. S. C. Ga.

[Endorsed:] United States Supreme Court. No. —. L. F. Hennington, pl'ff in error, *vs.* State of Georgia, def't in error. Citation to defendant in error, July 22d, 1892. I acknowledge service of this citation this 22nd day of July, 1892. A. W. Fite, att'y for State of Georgia.

4 The Supreme Court of the United States.

L. F. HENNINGTON, Plaintiff in Error,
versus
THE STATE OF GEORGIA, Def't in Error. } Petition for Allowance of Writ of Error.

To the Honorable Henry Billings Brown, one of the justices of the Supreme Court of the United States:

Your petitioner respectfully represents that heretofore, to wit, on the — day of ——, 189–, he was indicted by the grand jury for the county of Dade, in the State of Georgia, for the offense of misdemeanor, for that he did, on the 15th day of March, 1891, in the county aforesaid, the same being the Sabbath day, run a freight train on the Alabama Great Southern railroad in said county, he, the said Hennington, being then and there the superintendent of transportation and the officer having charge of the business of that department of said railroad in said county; that at the term of said court holden in September, 1891, said case came on *the* be heard; and thereupon said Hennington entered a plea of not guilty, and also a further plea in that behalf showing that the State of Georgia ought not to prosecute said indictment against him because at the

time named in said indictment the Alabama Great Southern Railroad Company extended from the city of Chattanooga, in the State of Tennessee, to the city of Meridian, in the State of Mississippi, passing through the States of Mississippi, Alabama, Georgia, and Tennessee, the length of said railroad in the State of Mississippi being 17 miles, in the State of Alabama 245 miles, in the State of Georgia 24 miles, and in the State of Tennesse 9 miles, and that said railroad at said time was owned and operated by a body corporate by name the Alabama Great Southern Railroad Company, duly incorporated under the laws of the State of Alabama, and that said company at said time was
5 engaged as a common carrier for the transportation of passengers and merchandise along and upon said railroad through said State of Georgia from points without said State to points beyond said State, wherein is used and employed freight and passenger trains, propelled by steam, in the movement whereof said railroad company employed divers and sundry persons, and, among others, your petitioner as superintendent of transportation of said train, and that the trains for running whereof said indictment was found against your petitioner were engaged in transporting through said State of Georgia merchandise coming from points outside that State and destined to other points in States other than the State of Georgia; which plea was overruled and disallowed; to which your petitioner excepted; and thereafter, upon the trial of said indictment, all of the foregoing facts contained in said plea were duly given in evidence to said jury, there being no other evidence introduced upon the hearing of said indictment; and thereupon your petitioner requested the court to charge the jury empanelled in said case that the statute of the State of Georgia, to wit, sec. 4578 of the code of said State, forbidding the running of freight trains on the Sabbath day upon any railroad in the State of Georgia, upon which statute said indictment was based, was in contravention of sec. 1, acticle 8, of the Constitution of the United States, so far as the facts of the said case were concerned, and that said jury should return a verdict acquitting your petitioner of any offence in the premises; but the said court refused to so instruct the jury, and that the jury returned a verdict finding the defendant, your petitioner, guilty as charged in said indictment; that your petitioner immediately took proper steps in the supreme court of the State of Georgia, being the highest court in said State, to reverse said judgment of conviction, upon the ground that said statute was in contravention of said clause of the Constitution of the United States, but said court
6 affirmed said judgment of conviction against your petitioner, and judgment of affirmance of said conviction was entered in said case by said supreme court of the State of Georgia on the 8th day of June, 1892; all of which will more fully appear by a transcript of the proceedings in said case, which is submitted herewith.

Your petitioner avers that there is manifest error in the said record and proceedings, for the correction whereof he desires to prosecute

a writ of error to the Supreme Court of the United States, which he prays may be allowed.

L. F. HENNINGTON,
By EDWARD COLSTON,
His Attorney.

Cincinnati, O., July, 1892.

Filed in office July 26, 1892.

Z. D. HARRISON,
C. S. C. Ga.

7 Supreme Court of the State of Georgia, Clerk's Office, Atlanta.

L. F. HENNINGTON, Pl'ff in Error,
vs.
STATE OF GEORGIA, Def't in Error.

Know all men by these presents that we, The Alabama Great Southern Railroad Company and F. Y. Anderson, are held and firmly bound unto the State of Georgia in the sum of one thousand ($1,000) dollars, to be paid to the said State of Georgia; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this — day of ——, 18—.

Whereas the above-named L. F. Hennington has filed a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Georgia:

Now, therefore, the condition of this obligation is such that if the above-named L. F. Hennington shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

THE ALABAMA GREAT SOUTHERN
RAILROAD CO. [SEAL.]
F. Y. ANDERSON. [SEAL.]

Sealed and delivered in presence of—
—— ——.

The above security is approved.

HENRY B. BROWN,
Associate Justice Sup. Ct.

8 I hereby certify that the surety on within bond, namely, Mr. F. Y. Anderson, is worth over and above all his debts and liabilities the sum of five thousand ($5,000.00) dollars.

N. W. TRIMBLE,
[OFFICIAL SEAL.] *Clerk U. S. Court (Circuit),*
Northern Dist. Ala.

Filed in office July 26, 1892.

Z. D. HARRISON,
C. S. C. Ga.

9 In the Supreme Court of the United States.

L. F. HENNINGTON, Plaintiff in Error,
versus
THE STATE OF GEORGIA, Def't in Error. } Assignment of Errors.

Comes now the plaintiff in error, L. F. Hennington, by his attorney, Edward Colston, Esquire, and makes the following assignment of errors:

1. That the superior court in and for the county of Dade and State of Georgia erred in overruling and disallowing the plea of L. F. Hennington, plaintiff in error, showing that the State of Georgia ought not to prosecute said indictment against him for the reason that the alleged offence for which he was placed upon trial consisted in his operating, as superintendent of transportation of the Alabama Great Southern Railroad Company, freight trains engaged in commerce among the States, and that the statute of said State of Georgia under which said indictment was found, to wit, section 4578 of the Code of said State of Georgia, was repugnant to the Constitution of the United States, to wit, section 1, article 8, as regarded the facts in said case.

2. That said superior court in the trial of the case erred in refusing to instruct the jury that the said statute of the State of Georgia was repugnant to the Constitution of the United States when applied to the facts of this case, and that they should return verdict in favor of said defendant.

3. That the supreme court of the State of Georgia erred in affirming said judgment of conviction of this defendant and in not reversing the same.

Wherefore plaintiff in error prays that said errors be corrected, and that said judgment of said supreme court of Georgia be reversed.

EDWARD COLSTON,
Att'y for Pl. in Error.

Filed in office July 26, 1892.

Z. D. HARRISON,
C. S. C. Ga.

10 GEORGIA,
Dade County.

Be it remembered that heretofore, to wit, at the September, 1891, — of the superior court for said county, which court was begun and holden on the third Monday in September, and which adjourned on the second day of October, 1891—his honor Thomas W. Milner, one of the judges of the superior court for said State, presiding—there came on to be heard a cause then and there pending—The State of Georgia *versus* L. F. Hennington—the same being an indictment found true by the grand jury of said county, charging said Hennington with the offence of misdemeanor, as will be seen by reference to said bill of indictment. The parties announced ready, a jury was empanelled, and the case was submitted upon the following agreed statement of facts: It was admitted by the defendant

that he was superintendent of transportation of the Alabama Great Southern railroad, the property of the Alabama Great Southern Railroad Company, a body politic and corporate under the laws of the State of Alabama; that said line of railroad begins at the city of Chattanooga, in the State of Tennessee, running nine miles through the State of Tennessee, when it enters the county of Dade, in the State of Georgia, and runs through said county of Dade twenty-four miles over the line of road constructed and operated originally by the Wills Valley Railroad Co., when it enters the State of Alabama, and running through the State of Alabama two hundred and forty-five miles, and then into the State of Mississippi, and extending into said State to the city of Meridian, seventeen miles, where it connects with other roads; that said company was acting as a common carrier of passengers and freight along its said line, using engines and cars propelled by steam; that on the day mentioned in the indictment the said Alabama Great Southern Railroad Company, th-ough its superintendent of transportation, the said defendant, did run over its said line of road from said city of Chattanooga, in the State of Tennessee,
11 through the States of Georgia and Alabama to the city of Meridian, in the State of Mississippi, a train of cars loaded with freight for points beyond the limits of the State of Georgia, said train being loaded with said freight in the State of Tennessee and destined for points outside and beyond the limits of the State of Georgia. The said Hennington contended that in so far as the statute of the State of Georgia upon which the indictment in this case is founded was attempted to be applied to the facts of this case that said statute was repugnant to the Constitution of the United States, article one, section eight. This was overruled by the court, and said court instructed the jury that under the facts admitted the defendant was guilty, and upon this charge the jury returned a verdict finding the said Hennington guilty as charged; to which charge of the court the said Hennington then and there excepted and now and here assigns error thereon and insists that the court should have charged the jury, as requested by defendant, that under the facts admitted the statute charged in the indictment to have been violated did not obtain and the admitted facts did not constitute an offence, and that they should find the defendant not guilty.

The said Hennington, desiring to review said decision, specifies as necessary to be sent to the Supreme Court the indictment, with its entries; the plea, and verdict of the jury.

And as the facts aforesaid do not appear of record, now, on this third day of October, 1891, comes the said Hennington and tenders this his bill of exceptions, and prays that it may be certified and so made part of the record.

W. U. & J. P. JACOWAY,
R. J. & J. McCAMY,
Att'ys for Pl'ff in Error.

12 I do certify that the foregoing bill of exceptions is true and contains all of the evidence and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court for said county of Dade is hereby ordered to make out a complete copy of such parts of the record as are in this bill of exceptions specified and certify the same as such and cause the same to be transmitted to the next term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected. Interlineation made before signing the words, to wit, "Over a line of road constructed and operated originally as the Mills Valley railroad."

This 3rd day of Oct., 1891.

THOMAS W. MILNER,
J. S. C. C. C.

I acknowledge service on this bill of exceptions and waive all other and further service.

October 3d, 1891.

A. W. FITE, *Sol. Gen.*

GEORGIA, }
Dade County. }

I, S. H. Thurman, clerk superior court of said county, do hereby certify that the within is the original bill of exceptions in the case of L. F. Hennington, pl'ff in error, *vs.* The State of Georgia, def't in error, as filed in this office.

Given under my hand and seal of office this Oct. 6th, 1891.

[OFFICIAL SEAL.] S. H. THURMAN, *Clerk.*

13 (Endorsement:) No. 5. Cherokee. Supreme court, March term, 1892. L. F. Hennington, pl'ff in error, *v.* The State, def't in error. Bill of exceptions. (Original.) Filed in office this 5th day of Oct., 1891. S. H. Thurman, clerk. Filed in office Jan'y 4, 1892. Z. D. Harrison, C. S. C. Ga. W. U. & J. P. Jacoway, R. J. & J. McCamy.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *June* 14, 1892.

I hereby certify that the foregoing pages hereto attached contain a true copy of the original bill of exceptions in the case therein stated, as appears from said original now of file in this office.

Witness my signature and the seal of said court, hereto affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk S. C., Ga.

14 GEORGIA, }
Dade County. }

The grand jurors, selected, chosen, and sworn for the county of Dade, to wit: 1, Marion A. B. Tatum, foreman; 2, William J. Bradford; 3, Isaac Craig, Sr.; 4, George W. Stewart; 5, Joseph V. Stewart;

6, Henry J. Wolf; 7, Gabriel J. Chambers; 8, John G. Pitman; 9, John Bloom; 10, Andrew Brown; 11, Noah Killian; 12, Caspar M. Tatum; 13, Hugh Wallen; 14, Robert F. Lea; 15, Josiah Garr; 16, George W. Sharrock; 17, Isaac Doyle; 18, James W. Blevin; 19, John W. Fowler; 20, William M. Hale; 21, John R. Haswell; 22, John Hixon; 23, Isaac J. Willis, in the name and in behalf of the citizens of Georgia, charge and accuse L. F. Hennington, of the county and State aforesaid, with the offense of misdemeanor; for that the said L. F. Hennington, on the 15th day of March, in the year eighteen hundred and ninety-one, in the county aforesaid, did then and there, unlawfully and with force and arms, the same being the Sabbath day, run a freight train on the Alabama Great Southern railroad in said county, he, the said L. F. Hennington, being then and there the superintendent of transportation and the officer having charge of the business of that department of the said railroad in said county, contrary to the laws of said State, the good order, peace, and dignity thereof.

Superior court, March term, 1891.

A. W. FITE, *Sol. Gen.*

Presentment.

15 The def't waives being formally arraigned and pleads not guilty.

A. W. FITE, *Sol. Gen.*

Copy of the bill of indictment and list of witnesses sworn before the grand jury waived before arraignment.

JACOWAYS,
Def't's Att'ys.

Verdict of the Jury.

We, the jury, find the defendant guilty.

C. M. TATUM, *Foreman.*

(Endorsed): No. 3. Superior court, March term, 1891. (B. W. I.) The State *vs.* L. F. Hennington. Misdemeanor. True bill. Marion A. B. Tatum, foreman. A. W. Fite, sol. gen. Presentment. Witnesses: B. T. Brock, M. A. B. Tatum, H. Wallen.

STATE OF GEORGIA, }
Dade County. }

Sept. Term, Dade Superior Court, 1891.

THE STATE }
vs. }
L. F. HENNINGTON. }

Now comes the defendant, L. F. Hennington, and for a further plea in this behalf says that the State of Georgia ought not
16 to prosecute said indictment against him, because he says that at the time named in said indictment the said Alabama

G't Southern R. R. extended from the city of Chattanooga, Tenn., to the city of Meridian, Miss., passing through the States of Mississippi, Alabama, Georgia, and Tennessee; that the length of said road at said time in the State of Mississippi was 17 miles, in the State of Alabama was 245 miles, in the State of Georgia was 24 miles, and in the State of Tennessee was 9 miles, and that said railroad at said time was owned and operated by a body corporate known by the name and style of the Ala. G't Southern Railroad Company, duly incorporated under the laws of the State of Alabama, and that said company at said time was engaged as common carrier in the transportation of passengers and merchandise along and upon said road through said State of Georgia from points without said State to points beyond said State, and that said Ala. Great Southern Railroad Company did at said time use and employ on its said railroad in said transportation of passengers and merchandise certain vehicles of commerce known as freight and passenger trains, propelled by steam, and in the movement and control whereof said Alabama Great Southern Railroad Company did necessarily employ divers and sundry persons, and, among others, this defendant as superintendent of transportation of said trains, and that the freight trains for the running whereof on said Alabama Great Southern railroad said indictment was found against this defendant was at the time actually engaged, by the direction of this defendant as superintendent of transportation of said trains and other trains on said railroad, in transporting through said State of Georgia merchandise coming from points outside that State and destined to other points in States other than the State of Georgia; and this the said L. F. Hennington is ready to verify; and so he saith that the said statute of the State of Georgia under which this indictment
17 is found is in conflict with sec. 8, art. 1, of the Constitution of the United States, and therefore null and void as to cases like this, and he prays judgment that by the court here he may be dismissed and discharged from the said premises in said indictment specified.

W. U. & J. P. JACOWAY,
Def't's Att'ys.

GEORGIA, }
Dade County. }

I, S. H. Thurman, clerk superior court of said county, do hereby certify that the within 7 pages contains a full, true, and complete transcript of the record in the case of The State *vs.* L. F. Hennington, misd., in Dade superior court, as shown by the record and papers of file in this office.

Given under my hand and seal of office this Oct. 6th, 1891.

[OFFICIAL SEAL.] S. H. THURMAN, *Clerk.*

(Endorsement:) No. 5. Cherokee. March term, 1892. L. F. Hennington *vs.* The State. Transcript. Filed in office Jan'y 4, 1892. Z. D. Harrison, C. S. C. Ga.

18 Supreme Court, M'ch Term, 1892.

HENNINGTON
v.
THE STATE.

Error from Dade Co.

I hereby waive all exception to the form of the clerk's certificate to the record in the above-stated case.
M'ch 21st, 1892.

A. W. FITE, *Sol. Gen.*

(Endorsement:) No. 5. Cherokee. Hennington *v.* The State. Filed in office M'ch 28, 1892. Z. D. Harrison, C. S. C. Ga.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *June* 14, 1892.

I hereby certify that the foregoing pages, hereto attached, contain true and complete copies of the transcript of the record and of the waiver of the solicitor general in the case therein stated, as appears from said transcript and said waiver, now of file in this office.
Witness my signature and the seal of said court, hereto affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

19 Supreme Court of the State of Georgia.

ATLANTA, GA., *June* 8, 1892.

The honorable supreme court met pursuant to adjournment.
Present: All of the justices.

The following judgment was rendered:

L. F. HENNINGTON
versus
THE STATE.

This case came before the court upon a transcript of the record from the superior court of Dade county, and, after argument had, it is considered and adjudged by the court that the judgment of the court below be affirmed.

Bill of Costs.

Entering case	$6 00
Recording opinion	75c.
Remitter	2 00
Sheriff's fees	1 25
	$10 00

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *June* 17, 1892.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that R. J. McCamy, Esq., paid the above bill of costs.

Seal Supreme Court of the State of Georgia, 1845.

Witness my signature and the seal of said court, affixed the day and year last above written.

Z. D. HARRISON, *Clerk.*

20 HENNINGTON *v.* THE STATE.

By the COURT:

The provision of section 4578 of the Code making it a misdemeanor to run a freight train upon any railroad in this State on the Sabbath day is a regulation of internal police and not a regulation of commerce. It is not in conflict with the Constitution of the United States, even as to freight trains passing through the State from and to adjacent States, and laden exclusively with goods and freight received on board before the trains entered this State, and consigned to points beyond its limits. State *v.* Railroad Co., 24 W. Va., 783; approved; and the majority opinion in Norfolk & W. R. Co. *v.* Commonwealth (Va.), 13 S. E. Rep., 340; disapproved.

Judgment affirmed.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *June* 17, 1892.

I hereby certify that the above is a true copy of the decision of the supreme court of Georgia in the case therein stated.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

21 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *June* 17, 1892.

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the record in the case therein stated, said record consisting of copies of the original bill of exceptions, transcript of record, and waiver of solicitor general, judgment of the supreme court, and decision of the supreme court.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

22 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *August* 11, 1892.

I hereby certify that the foregoing pages hereto attached contain the complete record in the case therein stated, said record consisting of the original writ of error and citation, and copies of the petition and prayer for reversal, bond, assignment of errors, and of the original bill of exceptions, transcript of record, and waiver of solicitor general, judgment of the supreme court, and decision of the supreme court.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

Endorsed on cover: Case No. 15,111. Georgia supreme court. Term No., 150. L. F. Hennington, plaintiff in error, *vs.* The State of Georgia. Filed August 24, 1892.

JAN 28 1893
JAMES H. McKENNEY,

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1892.

L. F. HENNINGTON,

Plaintiff in Error,

versus

THE STATE OF GEORGIA,

Defendant in Error.

MOTION TO ADVANCE

BY

CLIFFORD ANDERSON,

COUNSEL FOR SAID STATE.

UNITED STATES OF AMERICA.

To the Honorable Supreme Court of the United States:

And now comes Clifford Anderson, Counsel for the State of Georgia in the case of L. F. Hennington, Plaintiff in error, versus said state, and respectfully moves the Court to advance said case on the docket and assign it for trial at the present term for some day during said term.

The said L. F. Hennington was indicted in the Superior Court of the county of Dade, in said state, for violating section 4578 of the Revised Code of said State, which provides that: "If any freight train shall be run on any railroad in this State on the Sabbath day (known as Sunday) the Superintendent of Transportation of such railroad company, or the officer having charge of the business of that department of the railroad, shall be liable for indictment for a misdemeanor in each county through which such train shall pass, and on conviction shall be for each offense, punished as prescribed in section 4310 of this Code. On such trial it shall not be necessary to allege or prove the names of any of the employees engaged on such train, but the simple fact of the train being run. The defendant may justify himself by proof that such employees acted in direct violation of the orders and rules of the defendant; (provided always that whenever any train on any railroad in this State, having in said train one or more cars loaded with live stock,

which train shall be delayed beyond schedule time, shall not be required to lay over on the line of road or route during Sunday, but may run on to a point where, by due course of shipment or consignment, the next stock pen on the route may be, where said animals may be fed and watered according to the facilities usually afforded for such transportation.) And it shall be lawful for all freight trains on the different railroads in this state running over said roads on Saturday night to run through to destination, provided the time of arrival according to the schedule by which the train or trains started on the trip, shall not be later than eight o'clock on Sunday morning."

Said Hennington was the Superintendant of Transportation of the Alabama Great Southern Railroad Company when said indictment was found by the Grand Jury and when said alleged violation of the law of said State occurred. It was claimed amongst other things by his counsel that said section of said Code is obnoxious to that clause of the Constitution of the United States which confers on Congress the power to regulate commerce among the several states, to-wit: Clause 3 of section 8, Article I. Said Hennington was convicted, and on writ of error sued out by him the Supreme Court of said State affirmed the judgment of the Court below. He then sued out a writ of error to this Court, returnable to the October Term, 1892, thereof. Having given the necessary bond to appear and answer the final judgement in said case, he was released from custody.

Until said case is disposed of by this Honorable Court the said law of said State forbidding the running of freight trains in said State on the Sabbath day

cannot be enforced against him nor against others who may violate it, and for this reason the State of Georgia, through its counsel, respectfully submits this application to have said case advanced and heard at the present term of this Honorable Court.

Alford Anderson
Counsel for Deft in error

which train shall be delayed beyond schedule time, shall not be required to lay over on the line of road or route during Sunday, but may run on to a point where, by due course of shipment or consignment, the next stock pen on the route may be, where said animals may be fed and watered according to the facilities usually afforded for such transportation.) And it shall be lawful for all freight trains on the different railroads in this state running over said roads on Saturday night to run through to destination, provided the time of arrival according to the schedule by which the train or trains started on the trip, shall not be later than eight o'clock on Sunday morning."

Said Hennington was the Superintendant of Transportation of the Alabama Great Southern Railroad Company when said indictment was found by the Grand Jury and when said alleged violation of the law of said State occurred. It was claimed amongst other things by his counsel that said section of said Code is obnoxious to that clause of the Constitution of the United States which confers on Congress the power to regulate commerce among the several states, to-wit: Clause 3 of section 8, Article I. Said Hennington was convicted, and on writ of error sued out by him the Supreme Court of said State affirmed the judgment of the Court below. He then sued out a writ of error to this Court, returnable to the October Term, 1892, thereof. Having given the necessary bond to appear and answer the final judgement in said case, he was released from custody.

Until said case is disposed of by this Honorable Court the said law of said State forbidding the running of freight trains in said State on the Sabbath day

cannot be enforced against him nor against others who may violate it, and for this reason the State of Georgia, through its counsel, respectfully submits this application to have said case advanced and heard at the present term of this Honorable Court.

Clifford Anderson
Counsel for Deft in Error

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. . . IN THE . . .

Supreme Court of the United States

OCTOBER TERM, 1895.

No. 150.

L. F. HENNINGTON,
Plaintiff in Error,

vs.

THE STATE OF GEORGIA,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

EDWARD COLSTON,
GEORGE HOADLY, Jr.,
Attorneys for Plaintiff in Error.

The Index Publishing Company, Cincinnati, Ohio, 1895.

Supreme Court of the United States

OCTOBER TERM, 1895.

L. F. HENNINGTON,
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vs.
THE STATE OF GEORGIA,
Defendant in Error.

No. 150.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This is a petition in error to reverse the judgment of the Supreme Court of Georgia affirming a conviction of the plaintiff in error by the Superior Court of Dade County, in said state, on an indictment charging him with the offense of misdemeanor, for that on the 15th day of March, 1891, in said Dade County, the same being the Sabbath day, said L. F. Hennington, being superintendent of transportation of the Alabama Great Southern Railroad Company, did run a freight train on the road of that company in said county contrary to the laws of the state of Georgia. On

the trial of the indictment the defendant (Hennington) pleaded not guilty, and also offered a special plea setting forth that at the time named in the indictment the Alabama Great Southern Railroad extended from the city of Meridian, in the state of Mississippi, to the city of Chattanooga in the state of Tennessee, passing through the states of Alabama and Georgia, and that said railroad at the time in question was owned and operated by the Alabama Great Southern Railroad Company, a corporation duly incorporated by and existing under the laws of the state of Alabama, and that at the time in question the said company was engaged as a common carrier in transporting passengers and merchandise over and upon said road through the state of Georgia from points outside that state and destined to points in states other than the state of Georgia, and that the railroad company at the time in question employed in said transportation of freight and passengers trains propelled by steam, and that in said transportation said railroad company necessarily employed divers and sundry persons, and among others the said Hennington as superintendent of transportation, and that the freight train, for the running of which on said railroad the indictmont was found against said Hennington, was at the time actually engaged in transporting through the state of Georgia merchandise coming from points outside of that state and destined to points in states other than the state of Georgia, and that the said statute of Georgia upon which said indictment was found was in conflict with Sec. 8, Art. 1 of the Constitution of the United States and therefore null and void. (See Record, pp. 8–9). On the trial of the cause there was an agreed statement, made part of the record, embodying the above facts, and also showing that Hennington contended in that court that the statute of Georgia on which the indictment was founded was repugnant to said provision of the Constitution of the United States, and

that said contention was overruled by the court, and that the jury was instructed to find defendant guilty, which it did. (See Rec., pp. 5–6). This conviction was affirmed by the Supreme Court of Georgia. A writ of error was brought here by Hennington to reverse the judgment of that court.

SPECIFICATION OF ERROR.

The error relied upon for the reversal of the judgment of the Supreme Court of Georgia is that the judgment of the Superior Court of Dade County should have been reversed and not affirmed, on the ground that the said statute of Georgia hereinafter mentioned is repugnant to Sec. 8, Art. 1 of the Constitution of the United States.

STATUTE OF GEORGIA.

The statute of Georgia, for violation of which the conviction in question was obtained, is as follows:

"*Running freight trains on Sabbath day.* If any freight train shall be run on any railroad in this state on the Sabbath day (known as Sunday), the superintendent of transportation of such railroad company, or the officer having charge of the business of that department of the railroad, shall be liable for indictment for a misdemeanor in each county through which such train shall pass, and, on conviction, shall be for each offense [punished as prescribed in Section 4310 of this Code]. (a). On such trial it shall not be necessary to allege or prove the names of any of the employes engaged on such train, but the simple fact of the train being run. The defendant may justify himself by proof that such employes acted in direct violation of the orders and rules of the defendant; [*Provided, always,* that whenever any train on any railroad in this state, having in such train one or more cars loaded with live stock, which train shall be delayed beyond schedule time, shall not be required to lay over on the line of road or route during

Sunday, but may run on to the point where, by due course of shipment or consignment, the next stock-pen on the route may be, where said animals may be fed and watered, according to the facilities usually afforded for such transportation]. (a). And it shall be lawful for all freight trains on the different railroads in this state, running over said roads on Saturday night, to run through to destination; *Provided*, the time of arrival, according to the schedule by which the train or trains started on the trip, shall not be later than eight o'clock on Sunday morning."

"SECTION 4310. *Punishment of accessories after the fact.* Accessories after the fact, except where it is otherwise ordered in this code, shall be punished by a fine not to exceed one thousand dollars, imprisonment not to exceed six months, to work in the chain gang on public works, or on such other works as the county authorities may employ the chain gang, not to exceed twelve months, and any one or more of these punishments may be ordered in the discretion of the judge: *Provided*, that nothing herein contained shall authorize the giving the control of convicts to private persons, or their employment by the county authorities in such mechanical pursuits as will bring the products of their labor into competition with the products of free labor."

ARGUMENT.

We claim that this statute of Georgia is repugnant to that clause of the Constitution of the United States, which provides that

"The Congress shall have power . . . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes." (Art. 1, Sec. 8, par. 3).

One of the main objects leading to the formation of the Federal Constitution was to remove entirely from state control the commerce above mentioned, and to place it under control of the Nation, through Congress.

"If there was any one object riding over every other in the adoption of the Constitution, it was to keep the com-

mercial intercourse among the states free from all invidious and partial restraints." Mr. Justice Johnson, in Gibbons v. Odgen, 9 Wheaton, 231.

In the case of the State Freight Tax, 15 Wall., 232, this court said:

"Beyond all question the transportation of freight, or of the subjects of commerce, for the purpose of exchange or sale, is a constituent of commerce itself. This has never been doubted, and probably the transportation of articles of trade from one state to another was the prominent idea in the minds of the framers of the Constitution, when to Congress was committed the power to regulate commerce among the several states. *A power to prevent embarrassing restrictions by any state was the thing desired.* The power was given by the same words and in the same clause, by which was conferred the power to regulate commerce with foreign nations."

Again, in Cook v. Pennsylvania, 97 U. S., p. 574, by Mr. Justice Miller, this court said:

"A careful reader of the history of the times which immediately preceded the assembling of the convention that framed the American Constitution can not fail to discover that the need of some equitable and just regulation of commerce was among the most influential causes which led to its meeting. States having fine harbors imposed unlimited tax on all goods reaching the continent through their ports. The ports of Boston and New York were far behind Newport, in the state of Rhode Island, in the value of their imports; and that small state was paying all the expenses of her government by the duties levied on the goods landed at her principal port. And so reluctant was she to give up this advantage, that she refused for nearly three years after the other twelve original states had ratified the Constitution to give it her assent.

"In granting to Congress the right to regulate commerce with foreign nations, and among the several states, and with the Indian tribes, and in forbidding the states without the consent of that body to levy any tax on imports, the framers of the Constitution believed that they had sufficiently guarded against the dangers of any taxation by the states which would interfere with the freest interchange of commodities among the people of the different

states, and by the people of the states with citizens and subjects of foreign governments.

"The numerous cases in which this court has been called on to declare void statutes of the states which in various ways have sought to violate this salutary restriction, show the necessity and value of the constitutional provision. If certain states could exercise the unlimited power of taxing all the merchandise which passes from the port of New York through those states to the consumers in the great West, or could tax—as has been done until recently—every person who sought the seaboard through the railroads within their jurisdiction, the Constitution would have failed to effect one of the most important purposes for which it was adopted.

"A striking instance of the evil and its cure is to be seen in the recent history of the states now composing the German Empire. A few years ago they were independent states, which, though lying contiguous, speaking a common language, and belonging to a common race, were yet without a common government.

"The number and variety of their systems of taxation and lines of territorial division necessitating customs' officials at every step the traveller took, or merchandise was transported, became so intolerable, that a commercial, though not a political union was organized, called the German Zollverein. The great value of this became so apparent, and the community of interest so strongly felt in regard to commerce and traffic, that the first appropriate occasion was used by these numerous principalities to organize the common political government now known as the German Empire.

"While there is, perhaps, no special obligation on this court to defend the wisdom of the Constitution of the United States, there is the duty to ascertain the purpose of its provisions, and to give them full effect when called on by a proper case to do so."

In County of Mobile v. Kimball, 102 U. S., 697, this court, by Mr. Justice Field, said:

"And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the states was to insure a uniformity of regulation against conflicting and discriminating state legislation."

The power over commerce given to Congress is exclusive except in a few cases where the object is local and not national, whether Congress has or has not legislated in regard to the particular matter in controversy:

"Whatever subjects of this power are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress." Cooley v. Board of Wardens of Port of Phildelphia, 12 How., 319.

It would seem an axiom that where a subject is placed by the Constitution, which is the supreme law of the land, under the regulation of Congress, all other interferences and control are excluded. Failure to accede to this view has, however, been a fruitful source of contention, and has furnished frequent occasion to this court to assert the value of this clause of the Constitution and its independence of all claim of the states to hamper this class of commerce.

In McCulloch v. Maryland, 4 Wheat., 424, Chief Justice Marshall said:

"No trace is to be found in the Constitution of an intention to create a dependence of the Government of the Union on those of the states, for the execution of the great powers assigned to it."

Again he says (p. 432):

"They" (the American people) "did not design to make their Government dependent on the states."

The Government of the United States is a Government of the people and not of the states.

This court long ago said that navigation *was a part* of commerce. (4 Wheat., 190). And later, that transportation is "commerce itself." (95 U. S., p. 470).

Consequently, transportation over lines of railroad passing through several states is commerce among states.

In Hall v. DeCuir, 95 U. S., 497, this court said:

"Repeated decisions of this court have determined that the power to regulate commerce embraces all the instruments by which such commerce may be conducted; and it is settled law that where the subject to which the power applies is national in its character, or of such a nature as to admit of uniformity of regulation, the power is exclusive of all state authority."

The right of continuous transportation from one end of the country to the other is essential to that freedom of commerce which the Constitution intended to secure.

In Wabash Railway v. Illinois, 118 U. S., 573, Miller, J., said this could not be too strongly insisted upon. Speaking of the commerce clause of the Constitution, he further said:

"And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the states, which was deemed essential to a more perfect Union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, the state within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce." (*Idem*, p. 573).

And again he says:

"But when it is attempted to apply to transportation through an entire series of states a principle of this kind, and each one of the states shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the states and upon the transit of goods through those states can not be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and can not be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said." (*Idem*, p. 577).

The authority over commerce given to Congress by the Constitution extends to a variety of subjects, some of which are local in their nature and the remainder national. As

was said by this court in County of Mobile v. Kimball, 102 U. S., at p. 697:

"The subjects, indeed, upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the states; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the states which consists in the transportation, purchase, sale, and exchange of commodities. Here there can of necessity be only one system or plan of regulations, and that Congress alone can prescribe. Its non-action in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free. There would otherwise be no security against conflicting regulations of different states, each discriminating in favor of its own products and citizens, and against the products and citizens of other states. And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the states was to insure uniformity of regulation against conflicting and discriminating state legislation."

And again, in Brown v. Houston, 114 U. S., at p. 630:

"The power to regulate commerce among the several states is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations. If not in all respects an exclusive power; if, in the absence of Congressional action, the states may continue to regulate matters of local interest only incidentally affecting foreign and interstate commerce, such as pilots, wharves, harbors, roads, bridges, tolls, freights, etc., still, according to the rule laid down in Cooley v. Board of Wardens of Philadelphia, 12 How., 299, 319, the power of Congress is exclusive wherever the matter is national in its character or admits of one uniform system or plan of regulation; and is certainly so far exclusive that no state has power to make any law or regulation which will affect the free and unre-

strained intercourse and trade between the states, as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other states, coming or brought within its jurisdiction. All laws and regulations are restrictive of natural freedom to some extent, and where no regulation is imposed by the government, which has the exclusive power to regulate, it is an indication of its will that the matter shall be left free. So long as Congress does not pass any law to regulate commerce among the several states, it thereby indicates its will that that commerce shall be free and untrammelled; and any regulation of the subject by the states is repugnant to such freedom."

There is no doubt that interstate commerce by means of railroads passing through several states is a national matter and admits of uniform regulation. It has been so decided by this court in numerous cases, among others: The case of the State Freight Tax, 15 Wall., pp. 279, 280; Brown v. Chicago, etc., Ry., 125 U. S., 481; in re Debs, Petioner, 158 U. S., 564.

LEGISLATION OF CONGRESS UPON THE SUBJECT OF INTERSTATE RAILROADS.

If any proof were needed beyond that afforded by the nature of the subject and the decisions of this court that interstate commerce by means of railroads is capable of uniform regulation and is of national importance, it is found in the acts of Congress. Congress has taken hold of the subject of interstate commerce by railroads, and by various and specific acts has assumed and exercised the powers given to it by the Constitution.

By an act passed June 15, 1866, entitled "An Act to Facilitate Commercial, Postal and Military Communication Among the Several States," 14 Statutes at Large, p. 66, now represented by Sec. 5258 of the Revised Statutes, it is provided that *every railroad company in the United States*

whose road is operated by steam is authorized to carry upon and over its road all passengers, troops, government supplies, mails, freight and property on their way from one state to another and to receive compensation therefor.

It will be observed that this statute does not say the railroad company is authorized to carry freight on its way from one state to another, *Sundays excepted*. But the authority to carry is absolute, and is derived directly from the Government of the United States. The authority so derived is not dependent in any sense upon any state legislation and can not be controlled by any state legislation. We may here repeat the truism pronounced by Chief Justice Marshall, in the great case of McCulloch v. Maryland, 4 Wheat., 424:

"No trace is to be found in the Constitution of an intention to create a dependence of the Government of the Union on those of the states."

No less strong is the declaration of this court in ex parte Siebold, 100 U. S., at p. 394, in reply to the argument that the preservation of peace and good order in society was not within the powers confided to Congress, but should be maintained only by the states. This court said:

"Here again we are met with the theory that the Government of the United States does not rest upon the soil and territory of the country. We think that this theory is founded on an entire misconception of the nature and powers of that government. We hold it to be an incontrovertible principle, that the Government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent."

We may add that the authority of the government rests upon all the railroads engaged in interstate commerce and that it has power to pass all police regulations necessary for the business.

The purpose of Congress in passing this act of June 15, 1866, to facilitate commercial communication among the several states (supra) is stated by this court to have been, "to remove trammels upon transportation between different states which had previously existed, and to prevent *the creation of such trammels in future.*" (Railroad Co. v. Richmond, 19 Wall., at p. 589).

It is impossible at any time to anticipate the various "trammels" which state legislatures might for one reason or another undertake to impose upon interstate commerce, but whatever the extent of these might be, there is no doubt the constitutional provision is an ample protection. As was said by Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat., at p. 415:

"This provision is made in a Constitution intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs."

By Section 4386, Revised Statutes of the United States, Congress has further exercised its authority over interstate railroads by requiring that no railroad company whose road forms part of a line over which cattle are conveyed from one state to another shall confine the same in cars for a longer period than twenty-eight consecutive hours without unloading the cattle for rest, water, and feeding, for a period of five hours; also by an act of May 29, 1884, 23 Statutes at Large, p. 32, Sec. 6, forbidding any railroad company within the United States to receive for transportation or to transport from one state to another any live stock affected with any contagious, infectious or communicable disease, and especially the disease known as pleuropneumonia; also the act of February 4, 1887, 24 Statutes at Large, p. 9, commonly called the Interstate Commerce Act; also the act of October 1, 1888, 24 Statutes at Large, p. 501, creating a board to arbitrate differences between interstate railroads and their employes; also the act of March

2, 1893, 27 Statutes at Large, p. 531, being an act to promote the safety of emptoyes and travellers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes. (See In re Debs, petitioner, 158 U. S., 580).

And we may safely assume that Congress will, should it be deemed necessary, respect the sensibilities of our friends in Georgia by providing that no railroad engaged in interstate commerce shall run its trains on Sunday.

There can be no doubt this Georgia statute operates as an interruption of interstate commerce so far as freight traffic is concerned on the Alabama Great Southern Railroad. That road is an important link of 295 miles in the through rail route between New Orleans and Cincinnati and thence to all points North and East. It is one of the great arteries of commerce between the North and Northeast and the South. This statute meets all our freight trains every Sunday night at the state line and calls a halt for sixteen hours, involving a total suspension of freight traffic for that period. During that time not a wheel can turn. It is too obvious for argument that this is an interference with interstate commerce. If freight trains are not to move on Sunday in these United States, the rule ought to be the same for all roads. There are two great lines of railroad leading from Cincinnati to New Orleans competing in business. One of these roads passes through the state of Georgia and the other does not. Why should the trains on one of these roads be delayed twenty-four hours and those on the other road not delayed at all, on account of Sunday? If there is to be a Sabbath observance for interstate commerce, the requirement ought to proceed from Congress and be made applicable to the whole United States, and thus put all railroads and com-

munities on the same footing. But whether it is proper that such restraint should be put upon commerce or not must depend upon the wisdom and discretion of Congress, and not upon state Legislatures. Suppose Georgia should choose to pass a law forbidding all freight trains to run through the state on Christmas Day, Washington's Birthday, General Lee's Birthday, or the birthday of Mr. Davis? Would not this be a shackle upon commerce forbidden by the Constitution? Or suppose legislation of a like kind should be enacted by the states forming the belt on which pass the great railroads connecting New York with San Francisco? Would not such legislation be an intolerable burden upon the freedom of commerce? If Georgia can forbid the movement of interstate commerce for any twenty-four hours it may see fit to select in every week, why may it not forbid such trains to move at all through that state? Or if it may forbid the movement of freight trains on Sunday, why may not the Legislature of that state pass a law requiring the speed of all trains, whether burdened with interstate commerce or not, to be reduced to five miles an hour? Once concede the power of states to legislate as to when trains bearing interstate freight shall run and when they shall not run, and the door will be opened for a brood of local exactions and burdens that would kill all traffic among the states by means of railroads. And if Georgia could pass such a law, why could not all the states between the Atlantic and the Pacific do the same? In that event, where would interstate commerce be? Where would be the Constitution of the United States? If Georgia can pass such a law as the one now in question, it may pass the one supposed, of greater burden. As Mr. Webster said in his argument in McCulloch v. Maryland, 4 Wheat., at p. 327:

"A question of constitutional power can hardly be made to depend on a question of *more or less*. If the states may tax, they have no limit but their discretion; and the

bank, therefore, must depend on the discretion of the state governments for its existence."

The same is true in regard to interstate commerce. If the claim of the state of Georgia be correct, interstate commerce must depend for its existence upon the discretion of the various states through which interstate commerce is done. Neither interstate commerce nor the Government of the United States could live amid such surroundings.

The state of Georgia can claim nothing for the validity of this act of the Legislature, from the fact that Congress has passed no law relative to the movement on Sunday of trains bearing interstate commerce. The non-action of Congress on the subject is evidence that it intends there should be no interference with interstate commerce for the sake of Sabbath observance. (County of Mobile v. Kimball, 102 U. S., at p. 697). Should the time ever come when it shall be expedient to hold in suspense all the interior interstate commerce of the United States during Sundays, Congress will so declare; but until such declaration is made, the intention of Congress is that there shall be no interruption to interstate commerce on that account. Such intention of Congress is supreme.

POLICE REGULATIONS.

The usual claim is made by the state of Georgia in this case that this legislation is nothing more than police regulation. The answer to that seems simple. The state of Georgia has no right to adopt any police regulation the effect of which would be to obstruct interstate commerce. It makes no difference what the purpose of the statute is. We look only to its effect. It seems sufficient on this head to quote some of the observations of this court on this subject made in one or two of the principal cases:

In Railroad Co. v. Husen, 95 U. S., 465, this court said (p. 470):

"Transportation is essential to commerce, or rather it is commerce itself; and every obstacle to it, or burden laid upon it by legislative authority, is regulation."

And again at p. 471:

"But whatever may be the nature and reach of police power of a state, it can not be exercised over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the national government."

Again, in Henderson v. Mayor, 92 U. S., at pp. 271—2, this court said, speaking of police power:

"This power, frequently referred to in the decisions of this court, has been, in general terms, somewhat loosely called the police power. It is not necessary for the course of this discussion to attempt to define it more accurately than it has been defined already. It is not necessary, because whatever may be the nature and extent of that power, where not otherwise restricted, no definition of it, and no urgency for its use, can authorize a state to exercise it in regard to a subject matter which has been confided exclusively to the discretion of Congress by the Constitution.

"Nothing is gained in the argument by calling it the police power. Very many statutes, when the authority on which their enactments rest is examined, may be referred to different sources of power, and supported equally well under any of them. A statute may at the same time be an exercise of the taxing power and of the power of eminent domain. A statute punishing counterfeiting may be for the protection of the private citizen against fraud, and a measure for the protection of the currency and for the safety of the government which issues it. It must occur very often that the shading which marks the line between one class of legislation and another is very nice, and not easily distinguishable.

"But however difficult this may be, it is clear from the nature of our complex form of government, that, whenever the statute of a state invades the domain of legislation which belongs exclusively to the Congress of the United States, it is void, no matter under what class of powers it may fall, or how closely allied to powers conceded to belong to the States."

In the case of Robbins v. Shelby Taxing District, 120 U. S., 494, this court, speaking on the same subject, said:

"Any taxation or regulation of the latter character would be an unauthorized interference with the power given to Congress over the subject. . . . . In a word, it may be said, that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems. The doctrine of the freedom of that commerce, except as regulated by Congress, is so firmly established that it is unnecessary to enlarge further upon this subject." (See also Bowman v. Chicago, etc. Ry. 125 U. S., 497, 499).

This court has said that the relations of the general government to interstate commerce are those "of direct supervision, control, and management." (In re Debs, Petitioner, 158 U. S. at p. 578.) Certainly, if this government has direct supervision of the conduct of interstate commerce upon the railroads of the country, it is not lawful for any state to pass laws prescribing days upon which such commerce shall not move at all. What would the direct supervision, control, and management of Congress amount to under such circumstances?

The Supreme Court of Appeals of Virginia, in the case of Norfolk & Western Railroad v. Commonwealth, 88 Va. R., p. 95, has decided that Sec. 3891 of the code of Virginia prohibiting the running of trains on Sunday between sunrise and sunset, except wrecking, passenger, stock, and United States mail trains, conflicts with the Constitution of the United States, Art. 1, Sec. 8, and is void.

Respectfully submitted,

EDWARD COLSTON,
GEORGE HOADLY, JR.,
Attorneys for Plaintiff in Error.

CINCINNATI, October 30, 1895.

Office Supreme Court U. S.
FILED,
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150

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895.

L. F. HENNINGTON, Plaintiff in Error,

vs.

THE STATE OF GEORGIA, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF GEORGIA.

BRIEF AND ARGUMENT OF J. M. TERRELL, COUNSEL FOR DEFENDANT IN ERROR.

FRANKLIN PRINTING & PUBLISHING CO., ATLANTA, GA.

Supreme Court of the United States.

L. F. HENNINGTON, *Plaintiff in Error,*
vs.
THE STATE OF GEORGIA, *Defendant in Error.*
No. 150.

IN ERROR TO THE SUPREME COURT OF GEORGIA.

BRIEF AND ARGUMENT OF COUNSEL FOR DEFENDANT IN ERROR.

Statement of the Case.

L. F. Hennington, plaintiff in error, was on the 15th day of March, 1891, superintendent of transportation of the Alabama Great Southern Railroad, which extends from the city of Chattanooga, Tennessee, to the city of Meridian, Mississippi, passing through the States of Tennessee, Georgia, Alabama and Mississippi; and as such superintendent of transportation did on that day, the same being the Sabbath day, run a freight train loaded with interstate freight in and through the County of Dade, State of Georgia. At the March term, 1891, of the Superior Court of said County of Dade, the said Hennington was indicted by the Grand Jury thereof for misdemeanor under Section 4578 of the Code of Georgia, in that he had run a freight train in said county on the 15th day of March, the same being the Sabbath day. At the September term, 1891, of said court Hennington was tried upon said indictment and was con-

victed. Upon the trial he contended that said Section 4578 of the Code of Georgia was in conflict with the interstate commerce clause of Section 8 of Article I. of the Constitution of the United States in so far as it applied to the facts of his case. After conviction in Dade Superior Court he carried the case to the Supreme Court of Georgia, where the judgment of the court below was affirmed.

The Alabama Great Southern Railroad Company is an Alabama corporation. It runs into and through only one county in Georgia, viz.: the County of Dade, and for the distance of twenty–four miles. The line of its road through Geoagia was originally constructed, operated and owned by the Wills Valley Railroad Company. This company was authorized to construct and operate this line of railway by act of the General Assembly of Georgia, approved January 31st, 1854. See Ga. Laws, 1853–54, p. 465.

Section 4578 of the Code of Georgia is as follows:

"If any freight train shall be run on any railroad in this State on the Sabbath day (known as Sunday), the superintendent of transportation of such railroad company, or the officer having charge of the business of that department of the railroad, shall be liable for indictment for a misdemeanor in each county through which such train shall pass, and, on conviction, shall be for each offense punished as prescribed in Section 4310 of this Code. On such trial it shall not be necessary to allege or prove the names of any of the employees engaged on such train, but the simple fact of the train being run. The defendant may justify himself by proof that such employees acted in direct violation of the orders and rules of the defendant: *Provided, always* that whenever any train on any railroad in this State having in such train one or more cars loaded with

live stock, which train shall be delayed beyond schedule time, shall not be required to lay over on the line of the road or route during Sunday, but may run on to the point where, by due course of shipment or consignment, the next stock-pen on the route may be, where said animals may be fed and watered according to the facilities usually afforded for such transportation. And it shall be lawful for all freight trains on the different roads in this State, running over said roads on Saturday night, to run through to destination: *Provided*, the time of arrival, according to the schedule by which the train or trains started on the trip, shall not be later than eight o'clock on Sunday morning."

Brief of Argument.

The sole question presented by the above statement of facts is, whether Section 4578 of the Code of Georgia when applied to freight trains loaded with interstate freight conflicts with the interstate commerce clause of the Federal Constitution.

History of Sunday Legislation in Georgia.

By an act of the Colonial Legislature of Georgia, approved March 4th, 1762 (see Cobb's New Digest, 853), it was prescribed that "No tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business or work of their ordinary callings, upon the Lord's day, or any part thereof (works of necessity or charity only excepted), and that every person being of the age of fifteen years or upwards, offending in the premises, shall for every such offense forfeit the sum of ten shillings. And that no person or persons whatsoever shall publicly cry, show forth, or expose to sale, any wares, merchandises, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person

so offending shall forfeit the same goods so cried, or showed forth, or exposed to sale, or pay ten shillings." This old act now constitutes Section 4579 of the Code of Georgia, which is as follows: "Any tradesman, artificer, workman or laborer, or other person whatever, who shall pursue their business or work of their ordinary callings upon the Lord's day (works of necessity or charity only excepted), shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in Section 4310 of this Code."

Section 4578 belongs to the same class of legislation as that embraced in Section 4579. By an act approved February 11th, 1850 (see Cobb's New Digest, 399), it was provided: "That from and after the 1st day of March next it shall not be lawful for any company or any individual to run any freight train or any car carrying freight upon any railroad now existing, or that may hereafter be made, in this State, on the Sabbath day; and any conductor or other person so running or assisting in running any train or car carrying freight on the Sabbath day shall each be guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding five hundred dollars." This act of 1850 was afterwards amended by substituting "superintendent of transportation" for "conductor," and in several other unimportant particulars, and with these amendments it constitutes Section 4578. These sections are to be found in that division of the Criminal Code of Georgia entitled "Offenses against public morality, health, police," etc.

These two sections of the Georgia Code rest upon the same principle. Section 4578 is not an extension, but rather a contraction of Section 4579. The latter applies alike to all trades, vocations and occupations, and concerns the general police of the State, and of

each and every interest of every description in the State. Under this section all commerce is suspended for the time being. A halt is called in all trades and occupations. Section 4578 belongs to the same class of legislation, and as was said by the Supreme Court of Georgia in this case, speaking through Chief Justice Bleckley, this section "seeks only to enforce and render effective, as respects the running of freight trains on Sunday, the scheme of internal police which the former established as universal throughout the State for all industries and avocations. On the assumption that the running of such trains on Sunday, under ordinary circumstances, is not a work of necessity, the running of them on that day was already prohibited by virtue of the prior statute when the later one was passed. The new legislation quietly assumes that the running of these trains on Sunday is not a work of necessity, and in express terms it renders the superintendent, or other officer having control of the running of trains, answerable penally for any running which may be done on that day. As the person having the right and power to prevent it, he is held responsible for its occurrence whenever it does occur, save when it is done by others in violation of his own orders and rules." And again, in the same case: "We hold confidently, and without doubt, that Section 4578 is no more a regulation of commerce than is Section 4579; that both are to be taken and construed together, and that the former is part and parcel of the police system generalized in the latter, but first drawn out in one of its details by the former and applied to the specific work or business mentioned, in so far, and in so far only, as superintendents or train managers are concerned. In so far as employees engaged immediately in running freight trains are concerned, Section 4578 has no direct appli-

cation. They are still left to be dealt with under the other section." (See case of Hennington *vs.* The State of Georgia, 90 Ga., 396.)

Sunday Laws Within State's Police Powers.

It is obvious from the above history ot this legislation, as well as from the statute itself, that nothing could have been more foreign to the authority enacting this Sunday law than an intention to regulate interstate commerce. Its origin not only antedates the act of the General Assembly authorizing the construction and operation of this road within the State, but it existed as the law of the Province of Georgia before the Constitution was dreamed of by the patriots of the Revolution. It was enacted for the sole purpose of promoting the mental, moral and physical well being of the people of Georgia by providing that they should obey one of nature's laws and rest at regular intervals from labor. This statute, as construed by the Supreme Court of Georgia, is nothing more than a police regulation. When this case was before that court, Chief Justice Bleckley, speaking for the court, said on page 399 of 90 Ga.: "Nor is the statute a regulation of commerce. It applies alike to all business, vocations and occupations. It concerns the general police of the State, and of all interests, whether agricultural, mechanical, manufacturing, commercial, professional or what not. It is universal and rigidly impartial, making no discrimination whatever for or against commerce or anything else. It puts no obstacle in the way of trade or its operations which is not encountered by every other class of worldly business or employment. Non-trading days are non-business days generally, and non-working days for all the people. Trade may go on when ~~nothing~~ anything else can; it stops only when, and so long as there is a

complete suspension of worldly enterprise and activity. It is required to take no rest which is not appointed for everything to take."

That it is within the province of the State Legislature to enact Sunday laws, and that such laws are a proper exercise of the police powers of a State, are questions that may be considered well settled. Such laws have been upheld by courts of last resort in many of the States, by several Federal Courts, and by able text writers. (See 2 Ohio St .391; 40 Ala., 725; 10 Ark., 259; 47 *Ibid*, 476; 8 Conn., 14; 89 Ga., 341; 64 Ill., 243; 9 Ind., 112; 2 Metc., 3; 39 La. Ann., 132; 20 Mo., 214; 33 Barb. (N. Y.), 548; 21 Howard Pr.; 156; 52 Pa. St., 126; 12 Lea., 499; 29 Tex., 235; 46 Fed. Rep., 905; 18 Cal., 685; 59 Cal., 19; 60 Cal., 202; 15 W. Va., 362; Cooley's Const. Lim. (5th edition), 726; Tiedmann's Lim. Police Power, 175 to 188; Cooley's Prin. Con. Law, 216.)

This Statute not a Violation of Federal Constitution.

It is true that this statute may indirectly affect interstate commerce, but it is not for that reason a regulation of commerce within the meaning of the Constitution. It was held by this Court in the State Tax Case in 15 Wall., 284, that, "a statute imposing a tax upon the gross receipts of railroad companies is not repugnant to the Constitution of the United States, and it is not a regulation of commerce between the States." The following language, used by Mr. Justice Strong in delivering the opinion of the Court, is applicable to the case at bar. "No doubt any tax upon business affects the subjects and opperations of commerce, yet it is not everything which affects commerce that amounts to a regulation of it within the meaning of the Constitution (p. 293); * * * * That its ultimate effect may be

to increase the cost of transportation may be admitted. So it must be admitted that a tax on any article of personal property, that may become a subject of commerce, or upon any instrument of commerce, affects commerce itself. If the tax be upon the instrument, as a railroad car, its tendency is to increase the cost of transportation. Still it is not a tax upon transportation or upon commerce, and it has never been seriously doubted that such a tax may be laid (p. 294). * * * While it must be conceded that a tax upon inter-state transportation is invalid, there seems to be no stronger reason for denying the power of a State to tax the fruits of such transportation after they had been mingled with the general property of the carrier (the railroad company), than there is for denying the State power to tax goods which have been imported after their original packages had been broken, and after they have been mixed with the mass of personal property in the country." (P. 295.) In line with the above will be found many decisions of this Court, notably, the Slaughter-house Cases, 16 Wall. 36; 17 Wall. 560; 7 Howard 283; 11 Peters 102; 93 U. S. 99: 101 U. S. 814; 113 U. S. 27; 115 U. S. 650; 116 U. S. 307; 118 U. S. 455; 124 U. S. 465, 128 U. S. 95; 129 U. S. 217; 133 U. S. 587, 145 U. S. 1.

In the Muhn case, 11 Peters, 102, a law of New York, which provides that every master of every vessel arriving in New York from a port of any other State is required under certain penalties within one day after his arrival to report in writing the names, ages and last legal settlement of every passenger, was held to be constitutional as a police regulation. It will be noticed in that case the burden was not placed upon all vessels, but only those "arriving in New York from a port of any other State." The Georgia statute is not open to

this objection. The Court says in this Muhn case on page 138: "We plant ourselves on what we consider impregnable positions. They are these: A State has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, when the jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of the State to advance the safety, happiness, and prosperity of its people, and to provide for their general welfare, by any and every act of legislation, which it may deem conducive to these ends, where the power over the particular subjects, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called *internal police*, are not thus surrendered or restrained; and consequently in relation to these, the authority of the State is complete, unqualified and exclusive. * * * * If we were to attempt a definition of this *internal police* we should say every law came within this description which concerns the welfare of the whole people of the State, or of any individual within it; whether it related to their rights or their duties; whether it respected them as men or as citizens of the State; whether in their public or private relations; whether it related to the rights of persons, or of property, or of the whole people of the State or of any individual in it; and whose operation was within the territorial limits of the State, and upon persons and things within its jurisdiction."

In the case of Smith *vs.* Alabama, 124 U. S. 465, the Court sustained the constitutionality of an Alabama statute which requires locomotive engineers in that State to be examined and licensed by a board appointed for that pur-

pose before operating an engine, else be deemed guilty of a misdemeanor, and, upon conviction, be fined or imprisoned, notwithstanding Smith operated a locomotive engine drawing a passenger train on the Mobile and Ohio Railroad, regularly plying in one continuous trip between Mobile in Alabama and Corinth, Mississippi, and *vice versa*, sixty miles of which trip was in Alabama, and two hundred and sixty-five miles in Mississippi, and never operated a locomotive engine hauling cars from one point to another point exclusively within the State of Alabama. The facts, the principle, and the statute involved in the Smith case are on all-fours with the facts, principle, and the statute involved in the case at bar, and every reason which supports as constitutional the Alabama statute will with equal force apply to the Georgia statute. In delivering the opinion of the Court in the Smith case, Mr. Justice Mathews, on page 481, used the following language: "It is to be remembered that railroads are not natural highways of trade and commerce. They are artificial creations; they are constructed within the territorial limits of a State, and by the authority of its laws, and ordinarily by means of corporations exercising their franchises by limited grants from the State. The places where they may be located, and the plans according to which they must be constructed, are prescribed by the legislation of the State. Their operation requires the use of instruments and agencies attended with special risks and dangers, the proper management of which involves peculiar knowledge, training, skill and care. The safety of the public in person and property demands the use of specific guards and precaution. The width of the guage, the character of the grades, the mode of crossing streams by culverts and bridges, the kind of cuts and tunnels, the mode of crossing other highways, the placing of watchmen and signals at points of special danger, the rate of speed at stations and through villages, towns and cities,

are all matters naturally and peculiarly within the provisions of that law from the authority of which these modern highways of commerce derive their existence. The rules prescribed for their construction and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the limits of the local law. They are not *per se* regulations of commerce; it is only when they operate as such in the circumstances of their application, and conflict with the expressed or presumed will of Congress exerted on the same subject, that they can be required to give way to the supreme authority of the Constitution." The Sunday law in question is a rule prescribed by the Legislature for the management and operation of all railroads within the State of Georgia and designed to protect persons and property by requiring what the wisdom of all ages has declared to be necessary for man's well-being—a rest from labor at regular intervals.

In the case of Railway *vs.* Alabama, 128 U. S. 96, the Court held that a statute of Alabama which requires locomotive engineers and other persons employed by a railroad company in a capacity which calls for the ability to distinguish and discriminate between color signals, to be examined in this respect from time to time by a board established for that purpose, and which exacts a fee from the company for the service of examination, is, so far as it affects interstate commerce, within the competency of the State to enact, until Congress legislates upon the subject. The plaintiff in error in that case, the Nashville, Chattanooga and St. Louis Railway Company, is a Tennessee corporation, and runs its trains from Nashville to various points in other States, twenty-four miles of its line being in Alabama, two miles in Georgia, seven in Kentucky, and four hundred and sixty-four in Tennessee. In this case, the doctrine laid down in the Smith case, above referred to,

was approved by the Court. Mr. Justice Field said, in delivering the opinion, on page 99: "It is conceded that the power of Congress to regulate interstate commerce is plenary, that is, incident to it. Congress may legislate as to the qualifications, duties, and liabilities of employees and others on railway trains engaged in that commerce; and that such legislation will supersede any State action on the subject. But until such legislation is had it is clearly within the competency of the States to provide against accidents on trains whilst within their limits. Indeed, it is a principle fully recognized by decisions of State and Federal Courts, that wherever there is any business in which, either from the products created or the instrumentalities used, there is danger to life and property, it is not only within the power of the States, but it is among their plain duties, to make provision against accidents likely to follow in such business, so that the dangers attending it may be guarded against so far as is practicable." And again, on page 101: "Such legislation is not directed against commerce, and only affects it incidentally, and, therefore, cannot be called, within the meaning of the Constitution, a regulation of commerce. As said in Sherlock *vs.* Alling, 93 U. S. 99, 104, legislation by a State of that character, 'relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit.' In our judgment the statute of Alabama under consideration falls within this class." The Georgia statute is not only of a similar character, but belongs to identically the same class, and Congress has failed to prescribe a day of rest for those engaged in moving interstate commerce.

In the case of Ficklen *vs.* Shelby County, 145 U. S. 1, a Tennessee statute imposing a tax upon factors, brokers,

buyers, or sellers on commission, or otherwise doing business within the State, or, if no capital be so invested, then upon the gross yearly commissions, charges or compensation for said business, was enforced aganist the plaintiff in error, notwithstanding the sales negotiated by him were made on behalf of principals residing in other States, the Court holding, " that if the tax could be said to affect interstate commerce in any way, it did so incidentally and so remotely as not to amount to a regulation of such commerce."

In the case of Walling *vs.* Michigan, 116 U. S. 446, a Michigan statute which imposed different taxes upon the business of selling or soliciting the sale of intoxicating liquors, according as the liquors were manufactured within the State, or were to be sent from another State, was held to be unconstitutional, and in delivering the opinion of the Court, Mr. Justice Bradley, on page 459, said: " It is suggested by the learned judge who delivered the opinion of the Supreme Court of Michigan in this case, that the tax imposed by the Act of 1875 is an exercise by the Legislature of Michigan of the police power of the State for the discouragement of the use of intoxicating liquors, and the preservation of the health and morals of the people. This would be a perfect justification of the Act if it did not discriminate against the citizens and products of other States in a matter of commerce between the States, and thus usurp one of the prerogatives of the national legislature."

If the Georgia statute applied only to freight trains hauling interstate freight, then it would come within the principle decided in the Walling case, but as it applies to all freight trains running in or through the State, the police power of the State is "a perfect justification of the act."

The identical question involved in this case has been passed upon by the Court of last resort in three States. By the Supreme Court of Georgia when the case at bar was

before it, by the Supreme Court of West Virginia in the case of the State *vs.* Railroad Company, 24 W. Va. 783, and by the Supreme Court of Virginia in the case of N. & W. Railroad Company *vs.* Commonwealth, 88 Va. 95. In the two first named cases the courts upheld the statutes as constitutional in able and well-considered opinions. In the Virginia case the statute was declared unconstitutional by a divided Court, Justice Lacy delivering a strong dissenting opinion. The weight of authority is therefore to the effect that statutes similar to the Georgia statute in question are not contrary to the interstate commerce clause of the Constitution, as they do not undertake to regulate interstate commerce, but affect it only incidentally. This preponderance of authority is supported by the decisions of this Court, above referred to, in which kindred statutes were upheld, and is most strongly sustained by the reason of the matter.

It was not only a proper exercise of the police power for the Legislature of Georgia to enact that every seventh day shall be a day of rest, and enforce the observance of such a day within the State by inflicting a fine or imprisonment for its violation, but in view of the fact that the experience and wisdom of all ages agree that rest from labor at regular intervals is essential to man's physical and mental well-being, it was the duty of the Georgia Legislature to enact the statute in question. This statute is consistent with the sentiment and custom of the American people which prevailed at the time of the adoption of the Constitution, and it is consistent with the prevailing sentiment and custom of the American people of to-day. It is in accordance with the custom of this Court, of every court in the United States, and of every department of this great government. The fact that interstate freight is incidentally affected to the extent that it must cease to move within the State of Georgia on Sunday, to the end that the people en-

gaged in the labor of moving such freight may rest, is not unreasonable. The same cessation from labor is required of all people.

The right of every State through which the Alabama Great Southern runs to enact a similar law and name a different day to Sunday "cannot," as said by Chief Justice Bleckley, on page 401, 90 Ga., "fairly be urged in condemnation of the police system prevailing at present in Georgia. Every system is reasonable or not according to conditions. When conditions change, it is time enough to change the system; and it may well be assumed that any necessary change will be made in due time. So far as appears, and so far as we are aware, no day in the week except Sunday is anywhere in the United States a day of enforced rest. We are not now practically concerned with what is possible if other days should, in some of the States, be preferred to Sunday. Whether in that event Georgia must change, or they must, or no day whatever be protected, need not be anticipated. It is enough that, under present conditions, interstate commerce is subjected to no unreasonable delay by the Sunday law now in force." It might be argued with greater force that the requirement of the Alabama statute as to the examination of locomotive engineers might possibly operate so as to absolutely stop the movement of interstate freight, but notwithstanding the existence of such an argument this Court sustained the Alabama law, as has been seen above.

So that the conclusion is inevitable, that section 4578 of the Code of Georgia is not contrary to section 8 of article 1 of the Constitution of the United States.

J. M. TERRELL,
For Defendant in Error.